IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.592 of 2000

Date of decision : October 8, 2007

State of H.P. **…Appellant.**

Versus

Deen Muhammed and others **…Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting? No.

For the appellant : Mr. D.S. Nainta, Dy. Advocate General.

For the respondents : Mr. R.S. Gautam, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondents were sent up for trial for offences punishable under Sections 353, 332, 504 and 506 read with Section 34 of the Indian Penal Code, for allegedly assaulting a police constable and thereby causing injuries to him when he was on duty.

3. Trial Court, after recording the evidence adduced by the prosecution, acquitted all the respondents holding that the evidence on record did not establish the charge against them beyond reasonable doubt.

4. As per prosecution version, PW-9 Constable Rajinder Kumar, boarded a bus at Jhanduta for going to some village to effect service of summons, issued by a Court, which was entrusted to him by the Station House Officer. At a place called Dahad, respondents allegedly boarded the bus and started consuming liquor. When PW-9 Constable Rajinder Kumar objected to their consuming liquor in the bus, the respondents caught him by his uniform shirt and gave beatings to him. In the process, his shirt got torn. Matter was reported by PW-9

Whether reporters of the local papers may be allowed to see the judgment?

Rajinder Kumar to Police Station, Sadar Bilaspur. He was got medically examined. However, no apparent injuries were noticed on his person. The shirt of the constable, which allegedly got torn, was also taken into possession during investigation. As per FIR, the constable was rescued from the clutches of the respondents by Pardhan Hardyal Singh, PW-5 Sohan Lal and PW-6 Baldev Singh. Police did not examine Hardayal Singh on the plea that he had been won over by the respondents. Baldev Singh and Sohan Lal, who were examined as PW-6 and PW-5, respectively, did not support the prosecution version. PW-2 Ashok Kumar, conductor-cum-owner of the bus though stated in the examination-in-chief that the constable was assaulted by the respondents, yet in his cross-examination he denied that the constable was assaulted, but simply stated that his shirt was torn by them. PW-9 Rajinder Singh himself stated that he was assaulted and given beatings, but his statement is not corroborated by the medico legal evidence, in the sense that no apparent injury was noticed on his person. The doctor recorded in the medico legal report Ext.PW1/A that the examinee complained of pain in the chest, right scapular and sub-scapular region, left scapular region and the neck while making movements. The shirt was produced in the Court, but nobody testified that it was torn nor did the Court make any observation that it was torn. The Investigating Officer of the case also did not record in the seizure memo. Ext.PW4/A, prepared at the time of taking into possession the shirt, that any part of it was torn.

5. In view of the above stated position, no fault can be found with the judgment of the acquittal recorded by the trial Magistrate. Hence, the appeal is dismissed.

October 8, 2007(ss) **(Surjit Singh), J**